

1-15-2015

State v. Fairchild Respondent's Brief Dckt. 41549

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"State v. Fairchild Respondent's Brief Dckt. 41549" (2015). *Idaho Supreme Court Records & Briefs*. 5021.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/5021

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

JOHN JOSEPH FAIRCHILD,

Defendant-Appellant.

No. 41549

Kootenai Co. Case No.
CR-2012-14805

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

HONORABLE BENJAMIN R. SIMPSON
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

TED S. TOLLEFSON
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

**ATTORNEYS FOR
PLAINTIFF-RESPONDENT**

JUSTIN M. CURTIS
Deputy State Appellate
Public Defender
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

**ATTORNEY FOR
DEFENDANT-APPELLANT**

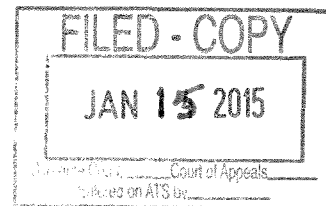


TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of Facts and Course of Proceedings	1
ISSUE	4
ARGUMENT	5
Fairchild Failed To Establish The District Court Abused Its Discretion When It Denied His Motion For A New Trial	5
A. Introduction	5
B. Standard Of Review	5
C. Fairchild Failed To Establish The District Court Abused Its Discretion When It Denied His Motion For A New Trial	6
CONCLUSION	11
CERTIFICATE OF SERVICE	11

TABLE OF AUTHORITIES

CASES

PAGE

<u>Kentucky v. Stincer</u> , 482 U.S. 730 (1987)	9, 10
<u>State v. Butcher</u> , 137 Idaho 125, 44 P.3d 1180 (Ct. App. 2002).....	6
<u>State v. Cantu</u> , 129 Idaho 673, 931 P.2d 1191 (1997)	6
<u>State v. Christiansen</u> , 144 Idaho 463, 163 P.3d 1175 (2007)	7
<u>State v. Dunlap</u> , 155 Idaho 345, 343 P. 3d 1 (2013)	9
<u>State v. Egersdorf</u> , 126 Idaho 684, 889 P.2d 118 (Ct. App. 1995)	5
<u>State v. Ellington</u> , 157 Idaho 480, 337 P.3d 639 (2014)	6
<u>State v. Hedger</u> , 115 Idaho 598, 768 P.2d 1331 (1989)	5
<u>State v. Olin</u> , 103 Idaho 391, 648 P.2d 203 (1982)	6
<u>Waller v. Georgia</u> , 47 U.S. 39 (1984).....	8, 9

STATUTES

I.C. § 19-2406	passim
----------------------	--------

RULES

I.C.R. 7(e)	8
-------------------	---

STATEMENT OF THE CASE

Nature of the Case

Fairchild appeals from the district court's denial of his motion for a new trial.

Statement of Facts and Course of Proceedings

The state charged Fairchild with Grand Theft. (R., pp. 90-91.) Approximately five months before trial the state served Fairchild with a proposed Amended Information. (4/9/13 Tr., p. 78, L. 18 – p. 82, L. 6.) The Amended Information also charged Grand Theft and but added “with the intent to deprive another of property” language. (R., pp. 90-91, 121-122.) Two months before trial, the state filed and served proposed jury instructions, which reflected the Amended Information. (R., pp. 107-109; 4/9/13 Tr., p. 78, L. 18 – p. 82, L. 6.)

During jury selection the parties agreed to exercise their preemptory challenges out of the presence of the jury and in chambers. (4/9/13 Tr., p. 68, L. 23 – p. 69, L. 15.) Fairchild waived his appearance as it related to the exercise of preemptory challenges. (Id.) After the exercise of peremptory challenges the district court asked both counsel about the order of jury instructions. (4/9/13 Tr., p. 72, L. 12 – p. 73, L. 2.) Fairchild's counsel stated he did not have anything to add regarding the order of the jury instructions, but asked to make a record regarding the jury instructions. (4/9/13 Tr., p. 73, Ls. 3-8.) The district court granted his request. (Id.) During the discussion regarding jury instructions, Fairchild's counsel objected to the charging instruction because it contained the

language of the Amended Information and the Amended Information was not filed. (4/9/13 Tr., p. 75, L. 8 – p. 78, L. 23.) The state responded by moving to amend the Information. (4/9/13 Tr., p. 79, L. 1 – p. 80, L. 2.) The state pointed out that it provided the Amended Information and proposed Jury Instructions to the defense months prior to trial and under Idaho Criminal Rule 7, the state is allowed to amended the Information. (Id.) Fairchild's counsel admitted that he had been provided the Amended Information and he was not surprised by the amendment. (4/9/13 Tr., p. 81, Ls. 5-20.) The district court found that the defendant's substantial rights were not prejudiced and found that the Amended Information did not charge an additional or different offense. (4/9/13 Tr., p. 81, L. 21 – p. 82, L. 8.) The district court allowed the amendment. (Id.) After the district court granted the motion to amend, Fairchild's counsel did not object to the proposed charging instruction. (Tr., p. 82, Ls. 15-17.)

The state also moved to dismiss Part 2 of the Information, the habitual offender count. (4/9/13 Tr., p. 79, Ls. 1-3.) Fairchild's counsel did not object. (Tr., p. 82, Ls. 9-12.) The parties then left chambers and conducted the trial. (Tr., p. 82, L. 24 – p. 84, L. 5.)

The jury found Fairchild guilty of Grand Theft. (R., p. 211.) Fairchild filed a Motion for New Trial on the grounds that the motion to amend was held in chambers. (R., pp. 234-241.) After a hearing, the district court denied Fairchild's motion for a new trial. (R., pp. 263-268.) The district court recognized that it was a decision within its discretion and ruled:

The amendment would have been made either with or without the defendant being present. Nor would the defendant

have been able to testify at the time of the hearing on the amendment because it is an issue of law. It does not appear in looking back at the trial that Mr. Fairchild's rights were violated as it relates to the ability to understand the charge, the ability to present evidence, and, in fact, evidence was presented on his defense in all particulars. There were a number of witnesses that testified on his behalf.

(9/10/13 Tr., p. 26, Ls. 14-23.) The district court sentenced Fairchild to eight years with three years fixed. (R., pp. 273-275.) Fairchild timely appealed. (R., pp. 286-287.)

ISSUE

Fairchild states the issues on appeal as:

Did the district court err when it denied Mr. Fairchild's motion for a new trial?

(Appellant's brief, p. 4)

The state rephrases the issue as:

Has Fairchild failed to show the district court abused its discretion when it denied his motion for a new trial?

ARGUMENT

Fairchild Failed To Establish The District Court Abused Its Discretion When It Denied His Motion For A New Trial

A. Introduction

Fairchild argues the district court abused its discretion by denying his motion for new trial. (Appellant's brief, p. 5.) Fairchild moved for a new trial because he claimed his right to a public trial and right to be present were violated when the district court held a motion hearing in chambers. (Appellant's brief, pp. 5-8.) Fairchild's claims are not grounds for a new trial under Idaho Code § 19-2406, and his rights to a public trial and right to be present were not violated. The district court did not abuse its discretion when it denied his motion for a new trial.

B. Standard Of Review

A decision on a motion for new trial is reviewed under an abuse of discretion standard. State v. Egersdorf, 126 Idaho 684, 687, 889 P.2d 118, 121 (Ct. App. 1995). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the lower court reached its decision by an exercise of reason. State v. Hedger, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989). A trial court has wide discretion to grant or refuse to grant a new trial, and on appeal the

appellate courts will not disturb that exercise of discretion absent a showing of manifest abuse. State v. Butcher, 137 Idaho 125, 135, 44 P.3d 1180, 1190 (Ct. App. 2002) (citing State v. Olin, 103 Idaho 391, 648 P.2d 203 (1982)).

C. Fairchild Failed To Show The District Court Abused Its Discretion When It Denied His Motion For A New Trial

Fairchild argues that he was entitled to a new trial because “the amendment of the information following jury selection, was held without his presence and in chambers.” (Appellant’s brief, p. 5.) “[Idaho Criminal Rule] 34 grants a trial court discretion to order a new trial ‘if required in the interest of justice,’ but ‘I.C. § 19–2406 sets forth the only grounds permitting the grant of a new trial and, therefore, limits the instances in which the trial courts discretion may be exercised.’” State v. Ellington, 157 Idaho 480, ___, 337 P.3d 639, 644 (2014) (citing State v. Cantu, 129 Idaho 673, 675, 931 P.2d 1191, 1193 (1997)). Fairchild argues that his claim for a new trial falls under subsections (1) and (5) of Idaho Code § 19–2406. (Appellant’s brief, pp. 5-6.):

When a verdict has been rendered against the defendant the court may, upon his application, grant a new trial in the following cases only:

1. When the trial has been had in his absence, if the indictment is for a felony.

...

5. When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial.

I.C. § 19-2406(1) and (5).

Neither of these subsections apply to Fairchild's claim. Fairchild argues his trial was held in his absence because the motion to amend hearing was not held in his presence. (Appellant's brief, p. 5.) Fairchild does not offer any evidence or law to support his argument that a motion hearing constitutes a "trial." (See Appellant's brief, pp. 5-7.) Fairchild failed to show his claim falls under subsection (1).

Nor does Fairchild's claim fall under subsection (5), which states that a defendant is entitled to a new trial, "[w]hen the court ... has erred in the decision of any question of law arising during the course of the trial." I.C. § 19-2406(5). Fairchild argues that the district court erred in a question of law because the district court held the motion to amend hearing in chambers. (Appellant's brief, pp. 6-8.) However, the district court was never asked to make a ruling whether the hearing should be held in chambers. (See 4/9/13 Tr., p. 75, L. 8 – p. 82, L. 17.) There can be no error in the decision of any question of law, such that would be grounds for granting a new trial under Idaho Code § 19-2406(5), where the district court was not asked to make a ruling. See State v. Christiansen, 144 Idaho 463, 470, 163 P.3d 1175, 1182 (2007) (if there was no objection there were no grounds for granting a new trial under I.C. § 19-2406(5)). Fairchild's trial counsel did not object to holding the motion hearing in chambers. (See 4/9/13 Tr., p. 75, L. 8 – p. 82, L. 17.) The district court was never asked a question of law regarding the location of the motion hearing, and thus the district court could not have erred in ruling on a "question of law" and Fairchild's claim does not fall under subsection (5).

However, even if Fairchild's claim falls under Idaho Code § 19-2406, Fairchild failed to show the district court abused its discretion because his rights were not violated. Fairchild's claim that his right to a public trial was violated because a motion hearing was held in chambers is without support. Fairchild failed to cite any case or authority that extends his public trial right to a motion to amend hearing. (See Appellant's brief, pp. 6-7.) There is no requirement that a district court hold a hearing on a motion to amend. See I.C.R. 7(e). District courts can, and do, rule on written motions without ever holding a hearing.

Instead, Fairchild cites to Waller, an United States Supreme Court decision, in which the Court extended the right of a public trial to a suppression hearing. (Appellant's brief, pp. 6-7 (citing Waller v. Georgia, 47 U.S. 39, 46 (1984).) The rationale used by the Waller Court to extend the right of a public trial to an evidentiary suppression hearing does not apply to the motion to amend hearing held in Fairchild's case. Waller reasoned:

In addition to ensuring that judge and prosecutor carry out their duties responsibly, a public trial encourages witnesses to come forward and discourages perjury.

These aims and interests are no less pressing in a hearing to suppress wrongfully seized evidence. As several of the individual opinions in Gannett recognized, suppression hearings often are as important as the trial itself.

...

In addition, a suppression hearing often resembles a bench trial: witnesses are sworn and testify, and of course counsel argue their positions. The outcome frequently depends on a resolution of factual matters. The need for an open proceeding may be particularly strong with respect to suppression hearings. A challenge to the seizure of evidence frequently attacks the conduct of police and prosecutor. As the Court of Appeals for the Third Circuit has noted, "[s]trong pressures are naturally at work on the

prosecution's witnesses to justify the propriety of their conduct in obtaining" the evidence. The public in general also has a strong interest in exposing substantial allegations of police misconduct to the salutary effects of public scrutiny. In sum, we hold that under the Sixth Amendment any closure of a suppression hearing over the objections of the accused must meet the tests set out in Press-Enterprise and its predecessors.

Waller, 467 U.S. at 46-47 (internal citations omitted). In contrast, the motion to amend hearing held in chambers did not involve risk of perjury because there was no testimony or the taking of any evidence. (4/9/13 Tr., p. 75, L. 8 – p. 82, L. 17.) Nor was there any allegations of police misconduct. (Id.) Instead, the district court ruled on a motion to amend, where Fairchild had been aware of the proposed amendment months prior to the hearing. (Id.) Fairchild does not provide any case law where a purely legal motion hearing, where both counsel are present, constitutes a "trial" where his right to a public trial would be implicated.

Nor was Fairchild's due process right to be personally present violated when the district court held the motion hearing in chambers. While the defendant has a right to be present at all proceedings, this right is not an absolute right. State v. Dunlap, 155 Idaho 345, 368, 343 P. 3d 1, 24 (2013) (citing Kentucky v. Stincer, 482 U.S. 730, 747(1987)). The right to be present guarantees "a defendant 'the right to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure.'" Id. (citing Stincer, 482 U.S. at 747). To establish that this right has been violated the defendant is required to present evidence that his presence could have affected the outcome of the hearing. Id. In Dunlap, the

Idaho Supreme Court held there was no due process violation where Dunlap was unable to show how his presence would have changed the hearing.

While Dunlap was not present on either occasion, Dunlap has not shown how his presence could have affected the outcome of either hearing. The district court included counsel in both meetings, and in the more substantive meeting regarding the phone call, the contents of the meeting were placed on the record to protect Dunlap's right to meaningful appellate review. Neither meeting appears to be the kind where Dunlap's assistance could have ensured fairer or more reliable proceedings because he did not possess any information related to the claims. Therefore, we conclude that Dunlap has failed to demonstrate error.

Id. In Stincer, the United States Supreme Court held that the defendant's due process right to be present was not violated by his absence from a competency hearing of a minor witness, because the defendant did not give any indication that his presence would have been useful in the hearing. Id. (citing Stincer, 482 U.S. at 747.) The United States Supreme Court explained "there is no indication that the defendant "could have done anything had he been at the hearing nor would he have gained anything by attending." Stincer, 482 U.S. at 747 (1987) (citation and brackets omitted). The same is true here. The district court found that Fairchild's presence would not have impacted the motion to amend.

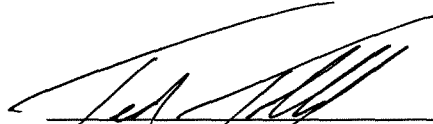
The amendment would have been made either with or without the defendant being present. Nor would the defendant have been able to testify at the time of the hearing on the amendment because it is an issue of law.

(9/10/13 Tr., p. 26, Ls. 14-17.) Fairchild's right to be present was not violated. The district court did not abuse its discretion when it denied his motion for a new trial.

CONCLUSION

The state respectfully requests this Court affirm the district court's decision denying Fairchild's motion for a new trial.

DATED this 15th day of January, 2015.




TED S. TOLLEFSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 15th day of January, 2015, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

JUSTIN M. CURTIS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



TED S. TOLLEFSON
Deputy Attorney General